

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File Number: EB-05-TP-363
Flagship Communications, Inc.	)	
Licensee of WNWF (AM)	)	NAL/Acct. No.200732700002
Destin, Florida	)	
Facility ID No. 72803	)	FRN 0008-8704-87
	)	

**FORFEITURE ORDER**

**Adopted:** January 30, 2007

**Released:** February 1, 2007

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand five hundred dollars (\$3,500) to Flagship Communications, Inc. (“Flagship”), the licensee of AM radio station WNWF in Destin, Florida, for willful and repeated violation of Section 17.57 of the Commission’s Rules (“Rules”) and for willful violation of Section 73.3526 of the Rules.<sup>1</sup> The noted violations involve Flagship’s failure to notify the Commission of a change in ownership information for antenna structure # 1226311 and its failure to make available a complete public inspection file.

**II. BACKGROUND**

2. On November 30, 2005, agents from the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”) conducted an inspection of AM radio station WNWF located in Destin, Florida. During regular business hours, the agents requested to inspect the station’s public inspection file. The station’s General Manager was unable to produce copies of the station’s contour maps; the ownership reports; the political file, the Public and Broadcasting Manual; the Issues-Program lists for any quarter; or copies of the station’s local public notice announcements.

3. On January 4, 2006, a search of the Commission’s Antenna Structure Registration (“ASR”) database revealed that station WNWF’s antenna structure with ASR # 1226311 was registered to Bayou Communications, Inc. According to Commission records, ownership of antenna structure # 1226311 was transferred to Flagship when it acquired station WNWF in 2003. On January 11, 2006, the General Manager for the station confirmed that Flagship is the owner of the antenna structure. On that date, an agent from the Tampa Office informed the General Manager that he needed to update the ownership information in the ASR database. As of October 10, 2006, Flagship had not updated its antenna structure’s ownership information.

4. On October 17, 2006, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Flagship in the amount of thirteen thousand dollars (\$13,000) for the apparent willful and repeated violation of Section 17.57 of the Rules and for the apparent willful violation of Section 73.3526 of the Rules.<sup>2</sup> Flagship submitted a response to the *NAL* stating that it had corrected the public file and

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<sup>1</sup> 47 C.F.R. §§ 17.57, 73.3526.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732700002 (Enf. Bur., Tampa Office, October 17,

antenna structure registration violations and requesting a reduction or cancellation of the proposed forfeiture based on its inability to pay.

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>3</sup> Section 1.80 of the Rules,<sup>4</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”). In examining Flagship’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup>

6. Section 17.57 of the Rules requires the owner of any antenna structure for which an ASR Number has been obtained to immediately notify the Commission using FCC Form 854 upon any change in ownership information.<sup>6</sup> Flagship became the owner of antenna structure # 1226311 in 2003 when it acquired station WNWF. As of October 10, 2006, Flagship failed to notify the Commission of the change in ownership of its antenna structure. In its response to the *NAL*, Flagship states that it updated the antenna structure ownership information on approximately October 17, 2006.

7. Section 73.3526(a)(2) of the Rules requires commercial broadcast stations to maintain for public inspection, a file containing materials listed in that section.<sup>7</sup> On November 4, 2005, in response to a request made to inspect the station’s public file during normal business hours, station WNWF was unable to produce the most current contour maps; ownership reports; the political file; “The Public and Broadcasting” manual; any quarterly issues and programs lists; or any local public notice announcements. There was also no evidence that these items were ever in the file. In its response to the *NAL*, Flagship states that it immediately took steps to include the missing documentation in its public file violation after the inspection.

8. Thus, based on the evidence, we find that Flagship willfully<sup>8</sup> and repeatedly<sup>9</sup> violated Section 17.57 of the Rules by failing to notify the Commission immediately of a change in ownership for antenna structure # 1226311 and willfully violated Section 73.3526 of the Rules by failing to make available a complete public inspection file.

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2006) (“*NAL*”).

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> 47 C.F.R. § 1.80.

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 C.F.R. § 17.57.

<sup>7</sup> 47 C.F.R. § 73.3526(a)(2).

<sup>8</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>9</sup> The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

9. In its response to the *NAL*, Flagship asserts that a \$13,000 forfeiture would produce a financial hardship and requests that the forfeiture be cancelled or significantly reduced. The Commission has determined that, in general, an entity's gross revenues are the best indicator of its ability to pay a forfeiture.<sup>10</sup> After reviewing Flagship's financial documentation, we conclude that a reduction of the forfeiture to \$3,500 would be appropriate.

10. We have examined Flagship's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Flagship willfully and repeatedly violated Section 17.57 of the Rules and willfully violated Section 73.3526 of the Rules. Although cancellation of the proposed monetary forfeiture is not warranted, reduction of the forfeiture amount to \$3,500 is appropriate based on Flagship's demonstrated inability to pay.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Flagship Communications, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand five hundred dollars (\$3,500) for violation of Sections 17.57 and 73.3526 of the Rules.<sup>11</sup>

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>12</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>13</sup>

<sup>10</sup> See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

<sup>11</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.57, 73.3526.

<sup>12</sup> 47 U.S.C. § 504(a).

<sup>13</sup> See 47 C.F.R. § 1.1914.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Flagship Communications, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau